



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: APRIL 24, 2023

IN THE MATTER OF:

Appeal Board No. 627787

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 627787, 627788, and 627789, the claimant appeals from the decisions of the Administrative Law Judge filed January 17, 2023, insofar as they sustained initial determinations disqualifying the claimant from receiving benefits, effective March 18, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by The City School District of the City of New York, prior to March 18, 2022 cannot be used toward the establishment of a claim for benefits; charging the claimant with an overpayment of \$10,080 in benefits recoverable pursuant to Labor Law § 597

(4); and reducing the claimant's right to receive future benefits by eight effective days, and charging a civil penalty of \$1,512 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded an opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. Further testimony and other evidence are needed before deciding whether the circumstances of the claimant's failure and refusal to be vaccinated disqualified her from receiving unemployment insurance benefits.

Initially, the parties are placed on notice that the hearing Judge will also consider whether the circumstances of the claimant's separation from employment were disqualifying on the basis that she voluntarily separated from

employment without good cause, and whether the circumstances of her separation amounted to a provoked discharge for unemployment insurance purposes.

Although the claimant applied for an exemption from the vaccination requirement based upon her sincerely-held religious beliefs, neither the file nor the record includes the claimant's initial application for such exemption. The parties are directed to produce the claimant's application for a religious exemption, which shall be received into evidence after the appropriate confrontation and opportunity for objection. The claimant's December 3, 2021 appeal from the employer's denial of her request, in the file at page 48, shall also be received into evidence after the appropriate confrontation and opportunity for objection.

The file indicates that the claimant submitted additional documentation and information requested by the appeal panel in January 2022. The parties are directed to produce all information and documentation the claimant submitted to any entity at any time in connection with her application for a religious exemption from receiving the COVID-19 vaccine, and in connection with any appeal from the denial of her request. Documents produced shall be received into the record after the appropriate confrontation and opportunity for objection.

The claimant shall be questioned further regarding the reason her religious beliefs prevented her from receiving the COVID-19 vaccination, and whether these beliefs resulted in the claimant's refusal to obtain other vaccinations. The claimant shall be questioned regarding her receipt of vaccinations in the past, when any such vaccinations occurred, and why they were not contrary to her religious beliefs. The claimant shall be questioned regarding when she began to hold the religious beliefs that resulted in her decision not to receive vaccinations, including the COVID-19 vaccination. The claimant shall also be questioned about the content of the clergy letter she submitted with her application for a religious exemption, including the absence of any statement that the claimant's receipt of the COVID-19 vaccination would contradict her religious beliefs.

Since the claimant referred to her pregnancy at the hearing, indicating that her condition was a consideration in her decision not to be vaccinated, she shall be questioned regarding whether she refused to get vaccinated based upon her religious beliefs, or her medical condition, and whether she applied to the employer for a medical exemption from receiving the vaccine.

In light of the claimant's testimony that other teachers in her position were granted religious exemptions, the employer shall produce a witness prepared to testify regarding the criteria the employer used to determine whether an individual applying for an exemption had a sincerely-held religious belief that exempted them from receiving the mandated COVID-19 vaccination.

The employer shall also produce a witness to explain the undue hardship on the Department of Education and its operations stated in the denial of the claimant's request. This explanation shall include, but not be limited to, the reason the employer granted some applications for accommodation, but denied the claimant's request. The parties shall be questioned regarding whether anyone met with the claimant in connection with her application.

The employer shall produce a witness to testify regarding what accommodations were made for the teachers whose requests for exemption based upon a sincerely-held religious beliefs were granted, and why accommodations were not available for the claimant.

The parties are placed on notice that failure to produce the witnesses and documentation directed by the Board may result in the hearing Judge or the Board taking an adverse inference against that party, and concluding that the evidence not produced would not have supported that party's position.

The hearing Judge may receive into the record any other evidence needed to decide the issues.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge, insofar as they sustained the initial determinations disqualifying the claimant from receiving benefits, effective March 18, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by The City School District of the City of New York, prior to March 18, 2022 cannot be used toward the establishment of a claim for benefits; charging the claimant with an overpayment of \$10,080 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the

claimant's right to receive future benefits by eight effective days, and charging a civil penalty of \$1,512 on the basis that the claimant made a

willful misrepresentation to obtain benefits, be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER